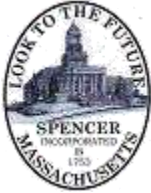


Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, May 12, 2011 7:15 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:15 p.m.

Zoning Board Members Present: Chairwoman Pamela Crawford, Clerk Joanne Backus, Allan Collette, and Delores Kresco, alternate.

Zoning Board Member Absent: None

Staff present: Michelle Buck, Town Planner, Bea Meechan, Senior Clerk, ODIS.

New Business:

A. Public Hearing – Variance, Carol Verschure, 12 Kittredge Road, Spencer (Assessor's Map R50/3/25). Chair Crawford was not present at this time, in the absent of Chair Crawford, Ms. Backus is acting as the Chair, and Mr. Collette was appointed as acting Clerk. Ms. Backus opened the hearing at 7:15 p.m. The Clerk read the brief. The applicant seeks relief, in accordance with Section 5.1 of the Spencer Zoning Bylaw, from the minimum front setback requirement to construct an addition (a garage and breezeway) to an existing single family-home. The property is located within the Rural Residential Zoning District.

Note: Ms. Crawford arrived at 7:20 p.m.

Ms. Backus asked the applicant for a presentation on the application.

Mr. Jason Dubois, from Bertin Engineering Associates representing the applicant, submitted photographs to the Board at this time. He explained the following:

- Picture #1 shows the South side of the house facing the road, the land from the house to the road elevated evenly (flat land). On the West side there is an up-hill slope from the house to the lot line.
- Picture # 2 shows the East side which has a down-hill slope from the house to the lot line.
- Pictures #3 & #4 show the houses in the neighborhood.
- Picture #5 is the aerial map, demonstrating the immediate surrounding properties.

Mr. Dubois said there is a septic system located in the North side and is close to the house. He pointed out the location on the plan. By reviewing the topographical characteristics of the property, the suitable area is the South side. The common characteristics of homes in the area are a single-family home with a breezeway and garage attached to the house and facing the road as shown in pictures 3 and 4. The proposed plan is to construct the addition to the South side of the house - which will be of the same character as the others.

However, if constructing the addition as planned, the front setback will not comply with Section 5.1 of the current Bylaw which requires a 55 foot front setback in the Rural Residential Zoning District. The existing setback is 65 feet, and as result of the addition the new front setback will be 29 feet. Mr. Dubois noted there is an existing house, the fourth house on the East side from 12 Kittredge Road that has 20 feet front setback. [Mr. Dubois pointed out the location on the aerial map].

Mr. Dubois said the applicants request a front setback relief from 55 feet to 29 feet which is the distance from the right-end corner of the proposed garage to the street line. In referencing to the plan, along the left side of the street line, there is approximately 10 feet from the left edge of the pavement to the street line. The distance from the left-end corner of the proposed garage to the street line is 40 feet as opposed to 29 feet from the right-end corner.

After reviewing the plan and the pictures provided tonight, the Board asked the following questions of Mr. Dubois:

- The Board inquired as to where the 10 foot area is in relation to the lot line and the street line. In addition, is the variance request a front setback relief of 29 or 40 feet?
 - Mr. Dubois pointed out the specific area, which is 10 feet along the left side of the street line, as shown on picture #1 to the Board. The applicant seeks relief from the minimum front setback of 55 feet to 29 feet.
- What is the dimension of the garage and breezeway?
 - The garage is 26' x 28'. The front side of the breezeway is 12' and 10' on the back side.
- What is the distance of the rear setback on the West side? Does this plan offer the best configuration under the circumstances?
 - The rear setback on the West side, from the house to the lot's line, is 53.6 feet. There are slopes on East and West side, and a septic system is located on the North side of home. Mr. Dubois explained the road is in the front of the property, the homeowners would drive off from the road and enter into the garage, passing through the breezeway, and go in the house through the existing side door – this is the best practical approach. Thus the selected location is the best configuration.

Note: There were no abutters present for this hearing.

With no further discussion, Mr. Collette made a motion to close the hearing at 7:30 p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor. Ms. Backus announced the members sitting in the voting were Mr. Collette, Ms. Kresco, and herself.

Mr. Collette made a motion to grant a Variance to Carol Verschure to construct an addition (a garage and breezeway) attachment onto the South side of an existing single-family residential dwelling. The new front setback would be 29 feet and the minimum required front setback in the Rural Residential Zoning District is 55 feet. *Ms. Kresco* seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

Finding: The Board determined that the findings had met the requirement in M.G.L, Chapter 40A, Section 11 and Section 7.3 of the Spencer Zoning Bylaws:

1. Owing to circumstances relating to topography of land (*specifically steep slopes on the West and East sides of the home and a septic system located on the North side of home*), and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant.
2. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-law.

This approval is granted with the following **conditions**:

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. Construction activities shall not commence until all required approvals and permits are obtained.

Ms. Backus explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and also to all abutters.

B. Public Hearing – Special Permit, Sarah Brown, applicant, WWB Properties Inc, owner, 152 Main Street, Spencer (Assessor’s Map U07/64). Ms. Crawford opened the hearing at 7:35 p.m. The Clerk read the brief. The applicant is requesting a Special Permit in accordance with Section 4.2.E.14 of the Spencer Zoning Bylaw to establish a dog grooming business in an existing commercial structure. The property is located within the Town Center Zoning District.

The Clerk also read the letter from the applicant dated 3/29/2011 which stated as follows:

I would like to open a business on the lower level of 152 Main Street (also known as 1 Mechanic Street) consisting of a dog grooming service, for dogs of less than 65 lbs. (no

cats). Dogs would be dropped off and picked up when their grooming was finished, therefore limiting the number of customers in the store at any time. Dogs would be kept inside at all times under my care, in safe, secure cages. There will be no changes made to the outside of the building. I would like only to put lettering in the front window if allowed. The preferred hours of operation would be Tuesday thru Friday from 8:45 a.m. – 5:00 p.m., and Saturday from 9:00 a.m. – 2:00 p.m. I would be the only employee at any time.

Ms. Crawford asked the applicant for a presentation on the application.

Ms. Brown said the nature of the business is basically as stated in the letter. The grooming services are for any breed with a weight less than 65 pounds, except pit-bulls and chows (of any weight). Due to the small space there will be a limited number of dogs to (4 – 5) at any given time, and will be kept indoors in the kennels. She will never let or take the dog outside from the establishment nor will allow boarding overnight.

Mr. Collette inquired to the location of the proposed business in the building.

Ms. Brown said it is the first unit of the building that faces Mechanic Street; however, the formal address is 152 Main Street. She pointed out the location on the field card obtained from the Assessor Office.

There are 2 entrances to this particular unit; Mr. Collette asked if the applicant would occupy the entire unit.

Ms. Brown replied that one part of the unit was already occupied; she is just renting out the available portion of the unit. Her business will have its own entrance.

The Board asked if the business considers selling any grooming products, and if not, would this be added to the business in the future.

Ms. Brown said the main focus of the business is the grooming aspect at this time. She has no plans of selling any associated grooming products just yet.

Ms. Buck asked for the dimension of her renting space. Ms. Crawford asked for the maximum number of kennel cages that fits in the space.

Ms. Brown said it is approximately 400 square feet as accordance with the Realtor. It can contain 5 kennel cages in total.

Note: There were no abutters present in this hearing.

With no further discussion, Ms. Backus made a motion to close the hearing at 7:45 p.m. Mr. Collette seconded the motion and the vote was 3-0 in favor. Ms. Crawford announced the members sitting in the voting were Mr. Collette, Ms. Backus, and herself.

Ms. Backus made a motion to grant a Special Permit to Sarah Brown (applicant) for the property owned by WWB Properties, Inc., located at 152 Main Street (also known as 1 Mechanic Street) to establish a dog grooming business in a portion of an existing commercial structure that is located in the Town Center Zoning District (approximately 400 square feet). The business will provide grooming services for dogs only (up to approximately 65 pounds). Dogs will be dropped off and then picked up when finished, therefore generally limiting the number of customers in the establishment to one at a time. Dogs will be kept indoors at all times in safe and secure cages. There will be no dogs kept overnight at any time. There will be no changes made to the outside of the building, only to put lettering in the front window if allowed. *Mr. Collette* seconded the motion and the vote was 3-0 in favor.

Ms. Crawford explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with instructions to the applicant, and also to all abutters.

Other Discussion:

A. Informal Discussion – Richard Barrell, 26 Laurel Lane. Mr. Barrell explained that his property is located within the vicinity of waterfront - Sugden Reservoir. He would like to construct an addition – a garage on the front of the existing house; however, this will create a front setback issue. Mr. Barrell spent significant amount of money for the surveyor's service (staking the boundary of the property) and also spent a lot of time on the configuration of the proposed plans, as a result there are various plans with different locations produced. Mr. Barrell distributed pictures of the property and the proposed plans to the Board at this time.

Mr. Barrell described the property as follows: When facing the house, a neighbor's home is on the right side, a driveway with steep slope down to Lake Reservoir is on the left side, the septic system is located at the rear of the house. The front setback from the left corner of the house is 23.2 feet; and 31.7 feet from the other corner.

Mr. Barrell discussed with the Health Agent the possibility of re-locating the septic system from the rear to another location, and was given some options, but none are affordable. When Mr. Barrell approached the neighbor to construct an addition onto the right rear side of the house, which would obstruct the water view from the neighbor, the neighbor was not in favor of the plan. He also had a discussion with Ms. Ginny Scarlet, the Wetland & Soil Specialist, and was told that he should not move it toward or near the Lake at all. Ms. Scarlet advised him to seek guidance from the Zoning Board of Appeals (ZBA).

The surveyor found an iron pin at the left corner of the property, but couldn't locate the other (on the right corner of the property). The surveyor staked out the area of the front yard and discovered that the road is actually situated further away from Mr. Barrell's front property. Therefore, the setback from the road (the paved surface) is more than what has been stated as mentioned above. With that finding and with the topography of the property, Mr. Barrell thought that seeking a relief from the minimum front setback would be reasonable and possible.

Mr. Collette asked whether the new information on the front setback was recorded in the Deed, in addition what mechanism or method was used to justify the new discovery of the front area.

Mr. Barrell replied that the surveyor searched all available documents relevant to the property. The only iron pin found was the left pin at the left corner of the property, he *couldn't locate the right iron pin* (on his property). In addition, the front lot's line of the property is being swayed off from the house, not in parallel to the house. The surveyor established the new front area by measuring the distance starting *from* the left iron pin of 26 Laurel Lane, followed the utility's line along the road side *to* the right iron pin of the neighbor's property at 24 Laurel Lane.

The Board commented that the existing road arrived from the farm road and due to this situation it is understandable the discrepancy had occurred.

Mr. Collette asked for the dimension of the proposed garage.

Mr. Barrell said the proposed garage is 38 feet in length, and 28 feet in depth. He would like to construct a garage in the front yard and attach it to the house - beginning from the mid-way of the house and continuing to the right side of the property. Mr. Barrell picked out the preferred proposed plan; Plan A, from the rest of the plans to the Board. According to the surveyor, there is a 10-foot distance from the pavement to the front line of the property (calculated by using the scaling method). The proposed garage, as shown on Plan A has no front setback (0 feet) from the front property line.

The surveyor did locate the iron pin on the left side of the property which shown on Plan A. However, the plan appeared to be incomplete. Mr. Collette asked if the surveyor was able to mark/stake the line (identify the property line) on the other side as well.

Mr. Barrell did not request a full completed survey of the property; the surveyor just basically located the iron pin(s) which found only one and the property's perimeter.

Ms. Backus commented there shall be some front setback from the road to the lot line. She asked why the plan proposes a 28-foot in depth dimension - it is quite deep.

Mr. Barrell said his truck is 24 feet long and with 28 feet dept that leaves 3-4 feet of space which he intends to store the tool boxes there (in front of the truck).

Ms. Buck asked if the proposed garage with the existing house comply with the maximum building coverage as specified in the current Zoning Bylaw. In addition, is the impervious surface coverage within comply as well?

The property contains 16,700 square feet, and the existing house is approximately 900 square feet. The maximum percentage for the building coverage is 25%; 40% allowed for the impervious coverage in the Lake Residential Zoning District. Mr. Barrell said he did the calculation and it is within the limit.

The Board members commented that there is a hardship in this situation. This is just an informal discussion therefore the Board could not give the answer. The decision will be made at the end of the public hearing if the applicant has chosen to go forward and submitted an application for a variance.

Mr. Barrell asked if the proposed plan is required to be a full set of plans when submitted with the application.

The Board said yes, they preferred a complete set of plans with the distance of the setback being specified in relation to front lot's line, and the dimension of the proposed garage.

Mr. Barrell thanked the Board and Ms. Buck for their time.

B. Zoning Amendment – Temporary permit for trailer. There was an incident that occurred the previous week involving the homeowner who is in the process of remodeling the existing home. She and the family (with 3 children) have rented the trailer and it would be dropped off at the premises in the next few days. She was without prior knowledge that in order to have a trailer temporary stationed on the premises, she would need to obtain a Special Permit as required in the current Bylaw. She discussed the matter with the Building Inspector, and he concurred with the provision.

The Board members consent that this particular provision needed an amendment, and recommended the matter shall be handled or managed by an issuance of a temporary permit (90 days) from the Building Inspector (BI), and shall be reinforced by the BI. The Board directed Ms. Buck of sending a letter to the Board of Selectmen with the plan to present the proposed amendment at the next Town Meeting.

C. Special Public Hearing – ATV Realty Trust, Borkum Road. Ms. Buck informed the Board of the "Agreement for Judgment for Remand to the Spencer Zoning Board of Appeals" from the Commonwealth of Massachusetts, Housing Court Department. There are 2 dockets, the first one specified Town of Spencer as a Plaintiff and ATV Realty Trust, and Jonathan S. Gabriel, Trustee, as Defendants, and the second docket specified Jonathan S. Gabriel, Trustee, ATV Realty Trust, as Plaintiffs and Allan Collette/Spencer Zoning Board of Appeals as Defendants. [The matter arises out of the use of all terrain vehicles of the ATV Realty Trust, 51 Borkum Road, Spencer, MA]. Ms. Buck read the content in the document as follows:

1. This matter shall be remanded to the Spencer Zoning of Appeals (ZBA) for a determination as to whether, and to what extent if at all, non-business related ATV/dirt bike activities are permissible at 51 Borkum Road property.
2. For purposes of this remand, the Cease and Desist order issued by then Spencer Building Inspector on October 3, 2006, encompasses all ATV/dirt bike activities, business related as well as personal and private.

Town Counsel, Stanley Weinberg, suggested scheduling a public hearing *for Wednesday, June 22, 2011.*

Approval of Minutes: Minutes for April 14, 2011.

Ms. Backus made a motion to accept the minutes for April 14, 2011. Ms. Kresco seconded the motion and the vote was 3-0 in favor with Ms. Crawford abstaining.

Old Business: None

With no further discussion, Ms. Kresco made a motion to adjourn the meeting at 8:10 p.m. Ms. Backus seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan
Senior Clerk, Office of Development and Inspectional Services

List of Documents used on May 12, 2011

- Variance application from Carol Veschure, 12 Kittredge Road.
- Special Permit application from Sarah Brown, applicant, WWB Properties, Inc, owner, 152 Main Street.
- Letter, pictures, and construction plans from Mr. Richard Barrell, 26 Laurel Lane.
- Remand order from Commonwealth of Mass, Housing Court Department, in determination on the ATV/dirt bike activities at 51 Borkum Road.